

AMENDED IN ASSEMBLY JUNE 8, 2006

SENATE BILL

No. 1701

Introduced by Senator Migden

February 24, 2006

An act relating to tidelands and submerged lands.

LEGISLATIVE COUNSEL'S DIGEST

SB 1701, as amended, Migden. Tidelands and submerged lands: ~~City and County of San Francisco: central waterfront~~ *Richardson Bay*.

~~Existing law grants to the City and County of San Francisco the right, title, and interest of the State of California in and to certain tidelands and submerged lands in trust for certain purposes. The State Lands Commission has jurisdiction over tidelands and submerged lands of the state~~ *Marin County certain lands within Richardson Bay to be used for specified purposes in which there is a general statewide interest. Existing law provides that if the lands are not used for the specified purposes within a specified time period, the ownership of the land reverts to the state.*

~~This bill would require~~ *authorize the State Lands Commission, in consultation with the City and County of San Francisco, to develop a plan for the use by the public of the central waterfront in the City and County of San Francisco to enter into agreements with Marin County and with private parties that own privately owned tidelands subject to the public trust in Richardson Bay for the sale or exchange of lands, the settlement of boundaries, confirmation of title, and establishment of an agreed ordinary high water mark upon a finding and declaration of specified conditions by the commission. The bill would make legislative findings and declarations regarding the*

inapplicability of a general statute within the meaning of Section 16 of Article IV of the California Constitution.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. The State Lands Commission, in consultation~~
2 ~~with the City and County of San Francisco, shall develop a plan~~
3 ~~for the use by the public of the central waterfront in the City and~~
4 ~~County of San Francisco.~~

5 ~~SECTION 1. As used in this act:~~

6 ~~(a) "BCDC" means the San Francisco Bay Conservation and~~
7 ~~Development Commission.~~

8 ~~(b) "Commission" means the State Lands Commission.~~

9 ~~(c) "County" means the County of Marin.~~

10 ~~(d) "Grant" means the legislative grant to the county pursuant~~
11 ~~to Chapter 497 of the Statutes of 1959, as amended by Chapter~~
12 ~~1375 of the Statutes of 1969.~~

13 ~~(e) "Granted lands" means certain tide and submerged lands~~
14 ~~in the county conveyed to the county by the grant.~~

15 ~~(f) The phrase "sale or exchange" and similar phrases also~~
16 ~~mean "sale and exchange."~~

17 ~~(g) "State" means the State of California.~~

18 ~~(h) "Streets" means those tidelands within the grant reserved~~
19 ~~to the state solely for street purposes. The streets include~~
20 ~~portions of those streets designated as Manzanita, Madrona,~~
21 ~~Pescadero, Eureka, Grove, Petaluma, Humboldt, and Donahue~~
22 ~~within that portion of Richardson Bay bounded by Teutonia~~
23 ~~Street, Railroad Avenue, and Yuba Street.~~

24 ~~SEC. 2. The Legislature finds and declares all of the~~
25 ~~following:~~

26 ~~(a) Upon its admission to the United States of America on~~
27 ~~September 9, 1850, the state, by virtue of its sovereignty,~~
28 ~~received in trust for the purposes of commerce, navigation and~~
29 ~~fishery, all right, title, and interest in ungranted tidelands and~~
30 ~~submerged lands and beds of navigable waterways within its~~
31 ~~borders. The landward boundary of such waterways is the~~
32 ~~ordinary high water mark.~~

1 (b) Under Section 3 of Article X of the California Constitution,
2 the state may sell tidelands within two miles of any incorporated
3 city, city and county, or town in the state, and fronting on the
4 water of any harbor, estuary, bay, or inlet that were reserved to
5 the state solely for street purposes, to any town, city, county, city
6 and county, municipal corporations, private persons,
7 partnerships or corporations, subject to such conditions as the
8 Legislature determines are necessary to be imposed in
9 connection with the sales in order to protect the public interest, if
10 the Legislature finds and declares that the tidelands are not used
11 for navigation purposes and are not necessary for those
12 purposes.

13 (c) Pursuant to the provisions of Division 6 (commencing with
14 Section 6001) of the Public Resources Code, the commission is
15 vested with jurisdiction and authority as to all right, title, and
16 interest in tidelands and submerged lands held by the state in
17 trust for the benefit of all the people of the state.

18 (d) The commission is authorized by Section 6357 of the
19 Public Resources Code to establish by agreement the ordinary
20 high water mark whenever it is deemed expedient or necessary.

21 (e) Pursuant to Chapter 543 of the Statutes of 1867–1868, as
22 amended by Chapter 388 of the Statutes of 1869–1870, the Board
23 of Tide Land Commissioners sold tideland lots in various areas
24 around San Francisco Bay.

25 (f) The streets were reserved to the state solely for street
26 purposes. The state also retained title to an area designated as
27 the “Rosedale Canal.”

28 (g) In 1959, the Legislature granted to the county pursuant to
29 the grant all the right title and interest in the streets, the
30 Rosedale Canal, and other designated areas in the county held
31 by the state by virtue of its sovereignty or by patent from the
32 United States of America pursuant to an act of Congress, 9 Stat.
33 519 (September 28, 1850). The grant provides that these areas
34 shall “be forever held by said county and its successors, in trust
35 for the uses and purposes and upon the express conditions
36 following.” The grant lists specific authorized uses including the
37 conduct of a harbor and establishes the landward limit of the
38 grant. The grant also permits the county to lease the granted
39 lands “for purposes consistent with the trust upon which said
40 lands are held by the State of California and with the

1 *requirements of commerce and navigation at said harbor.” The*
2 *grant further provides that the lands will revert to the state if not*
3 *improved consistent with the terms of the grant within a ten year*
4 *period.*

5 *(h) The grant was amended in 1969. The 1969 amendment*
6 *required that the lands be used “for purposes in which there is a*
7 *statewide interest.” This requirement was followed by a list of*
8 *potential uses, including a harbor, airport, construction of*
9 *highways, public buildings, a small boat harbor, preservation of*
10 *land in its natural state and a marine biological reserve.*

11 *(i) In 1979, the county submitted a required report to the state*
12 *indicating, among other things, certain portions of the tidelands*
13 *granted to the county had been developed for houseboat use and*
14 *stating that “In the county’s opinion the statutory requirements*
15 *[of the grant] have been met and that the granted lands should*
16 *remain in county ownership”*

17 *(j) On May 8, 1984, the county leased portions of the granted*
18 *lands for “any lawful use provided that such use is compatible*
19 *with the existing houseboat marina.” Portions of the granted*
20 *lands are now, and have been for many years, used for the*
21 *permanent mooring of houseboats.*

22 *(k) The use of the granted lands for the permanent mooring of*
23 *houseboats is not a purpose in which there is a statewide public*
24 *interest, but moving the houseboats would require the*
25 *construction of new docks and other facilities followed by vessel*
26 *relocation which would have potentially significant adverse*
27 *impacts on San Francisco Bay.*

28 *(l) The existing boundary configuration under which the state*
29 *retained sovereign interest in the streets under Richardson Bay*
30 *while lots in Richardson Bay were placed in private ownership*
31 *was premised on the assumption that Richardson Bay would be*
32 *filled and the streets used for pedestrian and vehicle access. This*
33 *assumption as to the future use of this area is no longer valid.*

34 *(m) The existing configuration of the underwater streets leased*
35 *by the county, located within the houseboat marinas, and running*
36 *between privately owned lots in the houseboat marinas is a*
37 *hindrance to the use of these sovereign lands for public trust*
38 *purposes because the streets are narrow and in that location are*
39 *not suitable for commerce or navigation.*

(n) Those portions of the granted lands within or immediately adjacent to the existing houseboat marinas are not, as a practical matter, used for navigation purposes and are not necessary for such purposes. Shallow water depths in and around the houseboat marinas render the marinas unusable as recreational boat harbors or by most shallow draft watercraft such as sailboats and larger recreational vessels. The houseboats themselves are an obstacle to navigation because they are moored for extended periods in a single location, do not float at most stages of the tide, and cannot move under their own power. The dredging necessary to render the houseboat marinas and immediately adjacent areas usable for harbor or watercraft recreational purposes is currently infeasible and ecologically undesirable due to benthic contamination. The houseboat marinas are, thus, also too shallow to be used for commercial navigation by even small, shallow draft commercial watercraft. In addition, commercial port use is incompatible with existing surrounding land uses. Port use and water-related industrial uses or cargo transport use in or adjacent to the houseboat marinas are not desirable or feasible, even with significant dredging. BCDC's San Francisco Bay Plan, and San Francisco Bay Area Seaport Plan designations and needs assessments, have not identified commerce and navigation, port, or water-related industrial uses for Richardson Bay.

SEC. 3. It is in the public interest for the commission to enter into, and the commission is authorized to enter into, one or more agreements with the county and with the lessees of the granted lands who also own privately owned tidelands subject to the public trust in Richardson Bay for the sale or exchange of lands, the settlement of boundaries, confirmation of title, and the establishment of an agreed ordinary high water mark, if the commission finds and declares that the agreement and underlying sale or exchange, boundary settlement, confirmation of title, and agreed ordinary high water mark meet all of the following criteria:

(a) The agreement is consistent with the findings and declarations in Section 2 of this act.

(b) The commission has independently conducted a review and analysis of the pertinent information bearing upon the relevant parcels and water bodies, including a review of all documents,

1 surveys, and deed descriptions of record. The commission has
2 also physically inspected and investigated the parcels included in
3 the agreement, and has concluded, based on its findings, that the
4 boundary lines, including without limitation the agreed ordinary
5 high water mark, are supported by fact and law.

6 (c) The agreement provides the public with a significant public
7 benefit because it will modify the existing pattern of state
8 ownership to consolidate the state's sovereign ownership in this
9 property in a pattern that will enhance the state's use of this
10 property for public trust purposes.

11 (d) The agreement provides that lands not needed for
12 navigation, not providing statewide public trust benefits, and
13 currently used for private residential purposes will be sold or
14 exchanged for privately owned open water areas that will be
15 used for purposes providing statewide public trust benefits,
16 including fishery, recreation, and open space.

17 (e) The agreement provides the public with a significant public
18 benefit by establishing an agreed ordinary high water mark
19 along the affected shoreline of Richardson Bay.

20 (f) A sale or exchange pursuant to such an agreement will not
21 diminish the amount of property potentially available for public
22 trust uses because the lands conveyed to a private party pursuant
23 to the agreement which are bayward of the agreed ordinary high
24 water mark shall remain subject to the public trust.

25 (g) The agreement to sell or exchange property provides the
26 public with a significant public benefit because the property
27 which the state will receive pursuant to a sale or exchange
28 provided for in the agreement will be held by the state as state
29 owned sovereign tide and submerged lands, and the monetary
30 value of the interests in property that the state will receive
31 pursuant to the agreement and sale or exchange will be equal to
32 or greater than the monetary value of the property being sold or
33 exchanged to a private party to the agreement.

34 SEC. 4. To effectuate the foregoing, the commission is
35 authorized to do all of the following:

36 (a) Convey to a private party by patent the right, title, and
37 interest held by the state by virtue of its sovereign trust title to
38 tide and submerged lands in and to the tidelands and submerged
39 lands granted to the county under the grant, reserving to the
40 state a public trust easement interest (the *jus publicum*) and

1 *subject to additional reservations as the commission may*
2 *determine to be appropriate.*

3 *(b) Receive and accept on behalf of the state in its sovereign*
4 *capacity lands or an interest in lands, conveyed to the state in its*
5 *sovereign capacity by the county or by a private party pursuant*
6 *to this act and pursuant to a sale or exchange authorized,*
7 *ratified, or confirmed by this act.*

8 *(c) Convey to the county by patent all of the right, title, and*
9 *interest of the state in lands conveyed to the state in its sovereign*
10 *capacity by the county or by a private party pursuant to this act*
11 *and pursuant to a sale or exchange authorized, ratified, or*
12 *confirmed by this act, subject to terms, conditions, and*
13 *reservations as the commission may determine are necessary to*
14 *meet the requirements of Section 3 of this act.*

15 *(d) Determine or settle as part of a sale or exchange, the title*
16 *to, the location of, or the boundaries of the granted lands or*
17 *other boundary lines that the commission deems necessary to*
18 *effectuate the sale or exchange or the purposes of this act.*

19 *(e) Confirm, by quitclaim of all of the right, title, and interest*
20 *of the state, that lands claimed in fee by a private party and not*
21 *subject to tidal action on and after February 22, 1980, are not*
22 *subject to the public trust.*

23 *SEC. 5. In the case where the state, pursuant to this act*
24 *conveys tidelands and submerged lands transferred to the county*
25 *pursuant to the grant, the state shall reserve all minerals and all*
26 *mineral rights in the lands of every kind and character now*
27 *known to exist or hereafter discovered, including, but not limited*
28 *to, oil and gas and rights thereto, together with the sole,*
29 *exclusive, and perpetual right to explore for, remove, and*
30 *dispose of those minerals by any means or methods suitable to*
31 *the state or to its successors and assignees, except that,*
32 *notwithstanding the grant or Section 6401 of the Public*
33 *Resources Code, any reservation shall not include the right of the*
34 *state or its successors or assignees in connection with any*
35 *mineral exploration, removal, or disposal activity, to do either of*
36 *the following:*

37 *(a) Enter upon, use, or damage the surface of the lands or*
38 *interfere with the use of the surface by a grantee or by the*
39 *grantee's successors or assignees.*

1 **(b)** Conduct mining activities of any nature whatsoever above
2 a plane located 500 feet below the surface of the lands without
3 the prior written permission of a grantee of the lands or the
4 grantee's successors or assignees.

5 **SEC. 6.** An agreement entered into pursuant to this act, shall
6 be conclusively presumed to be valid unless held to be invalid in
7 an appropriate proceeding in a court of competent jurisdiction to
8 determine the validity of the agreement commenced within 60
9 days after the recording of the agreement.

10 **SEC. 7.** (a) An action may be brought under Chapter 4
11 (commencing with Section 760.010) of Title 10 of Part 2 of the
12 Code of Civil Procedure by the parties to an agreement entered
13 into pursuant to this act to confirm the validity of the agreement.
14 Notwithstanding Section 764.080 of the Code of Civil Procedure,
15 the statement of decision in the action shall include a recitation
16 of the underlying facts and a determination as to whether the
17 agreement meets the requirements of this act, Sections 3 and 4 of
18 Article X of the California Constitution, and any other law
19 applicable to the validity of the agreement.

20 **(b)** For purposes of Section 764.080 of the Code of Civil
21 Procedure and unless otherwise agreed in writing, an agreement
22 entered into pursuant to this act shall be deemed to be entered
23 into on the date it is executed by the executive officer of the
24 commission, who shall be the last of the parties to sign prior to
25 the signature of the Governor. The effective date of the
26 agreement shall be deemed to be the date on which it is executed
27 by the Governor pursuant to Section 6107 of the Public
28 Resources Code.

29 **SEC. 8.** A sale or exchange, boundary settlement,
30 confirmation of title, or agreed ordinary high water mark made,
31 established, or accomplished pursuant to this act is hereby found
32 to be of statewide significance, and, therefore, an ordinance,
33 charter provision, or other provision of local law inconsistent
34 with this act shall not be applicable to the exchange or sale.

35 **SEC. 9.** The Legislature finds and declares that, because of
36 the unique circumstances applicable only to the lands within
37 Richardson Bay described in this act, a statute of general
38 applicability cannot be enacted within the meaning of

- 1 *subdivision (b) of Section 16 of Article IV of the California*
- 2 *Constitution. Therefore, this special statute is necessary.*

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